

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MONTELL M. HORTON,

Plaintiff,

ORDER

v.

02-C-0470-C

GERALD BERGE, PETER HUIBREGTSE,
PAMELA BARTELS and LINDA HODDY-TRIPP,

Defendants.

Plaintiff has filed a motion to “correct operative pleading” to include a statement that the defendants were acting “under color of state law” and to show that defendants are being sued in the individual and official capacities. The motion will be denied.

It is not necessary for plaintiff to allege in his complaint that defendants were acting under color of state law. Liberally construing plaintiff’s complaint, the court understands plaintiff to be alleging that the actions the defendant state officials took or failed to take during the course of their employment were actions taken under color of state law. Also, it would be useless for plaintiff to amend his complaint to sue the defendants in their official capacities. A suit for damages against a state official in his or her official capacity is a suit

against the state for Eleventh Amendment purposes. Shockley v. Jones, 823 F.2d 1068, 1070 (7th Cir. 1987). This means that if plaintiff were to sue the defendants in their official capacities, his claim for money damages against them would be barred by the Eleventh Amendment.

ORDER

IT IS ORDERED that plaintiff's motion to "correct operative pleading" to include a statement that the defendants were acting "under color of state law" and to show that defendants are being sued in the individual and official capacities is DENIED.

Entered this 26th day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge